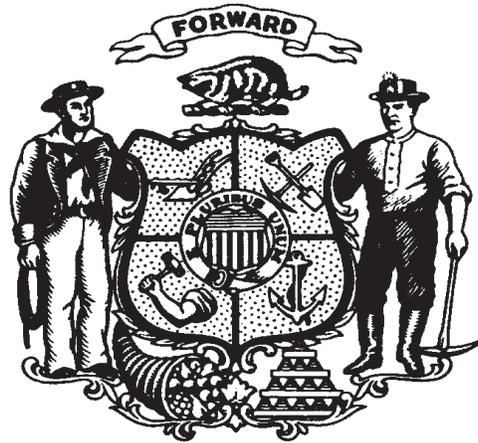


# Wisconsin Administrative Register

No. 578



Publication Date: February 29, 2004

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Revisor of Statutes Bureau  
Suite 800, 131 West Wilson Street  
Madison, Wisconsin 53703-3233

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## New material

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Financial Institutions – Credit Unions:	Entire Code
Health and Family Services:	<u>Management, Technology and Strategic Finance, Chs. HFS 1—</u> Pages 37 to 38
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Pages 323 to 329  <u>Environmental Protection—General, Chs. NR 100—</u> Pages 21 to 35; 37 to 54–1; 55 to 62–16; 323 to 336–1  <u>Environmental Protection—WPDES, Chs. NR 200—</u> Pages 57 to 60
Public Service Commission:	Pages 131 to 137
Transportation:	Pages 167 to 172; 173 to 178–4; 357 to 362–1
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## Instructions for inserting new material in the Wisconsin Administrative Code

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## Emergency rules now in effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade and Consumer Protection

Rules adopted creating **ss. ATCP 99.13, 99.25, 100.13 and 101.25**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

#### Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection currently administers an agricultural producer security program under ch. 126, Stats. (“producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (“the fund”). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor’s annual fund assessment is based, in large part, on the contractor’s annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor’s strong

financial condition is temporarily affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

(4) The department may adjust assessments by rule, in order to ameliorate unintended results. But the normal rulemaking process will require at least a year to complete. The temporary emergency rule is needed to address this matter in the short term, and to provide relief for contractors already affected.

**Publication Date: January 29, 2004**

**Effective Date: January 29, 2004**

**Expiration Date: June 27, 2004**

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### Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

#### Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board’s practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board’s rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board’s current rule to passing “each part” of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is

proceeding with promulgating these rule changes through a proposed permanent rule-making order.

**Publication Date:** June 28, 2003  
**Effective Date:** June 28, 2003  
**Expiration Date:** November 25, 2003  
**Hearing Date:** October 16, 2003  
**Extension Through:** March 23, 2004

### Employment Relations Commission

Rules adopted amending **ss. ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

#### Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

**Publication Date:** August 25, 2003  
**Effective Date:** September 15, 2003  
**Expiration Date:** February 12, 2004  
**Hearing Date:** November 20, 2003  
**Extension Through:** April 11, 2004

### Gaming

Rules adopting repealing **s. Game 23.02 (2)** of the Wisconsin Administrative Code, relating to the computation of purses.

#### Finding of emergency

The Wisconsin Department of Administration finds that an emergency exists and that a rule is necessary in order to repeal an existing rule for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Section Game 23.02 (2) was created in the Department's rulemaking order (03-070). The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

**Publication Date:** January 8, 2004  
**Effective Date:** January 8, 2004  
**Expiration Date:** June 6, 2004  
**Hearing Date:** March 16, 2004  
**[See Notice This Register]**

### Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

#### Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and

Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child-bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

**Publication Date:** January 31, 2003  
**Effective Date:** January 31, 2003\*  
**Expiration Date:** June 30, 2003  
**Hearing Dates:** April 25 & 28, 2003

\* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

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## Insurance

The office of the commissioner of insurance adopts an order to create s. **Ins 8.49**, Wis. Adm. Code, relating to Small Employer Uniform Group Health Application.

### Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not

possible to complete the permanent rule process in time to meet the statutory requirement.

The first emergency rule was submitted and published on July 31, 2003, to meet the statutorily imposed deadline. However, subsequent to submission of the permanent rule by the Office, the legislative committees having jurisdiction over the rule requested the Office to modify the permanent rule. The notice requesting modification was received by the Office on December 18, 2003, less than 30 days from the date the emergency rule was set to expire.

Since it will not be possible to have the permanent rule finalized by December 29, 2003, and JCRAR was unable to grant an extension on the emergency rule, this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Stats., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule. A hearing on this emergency rule will be noticed and held within 45 days in accordance with ch. 227, Stats.

**Publication Date:** January 7, 2004  
**Effective Date:** January 7, 2004  
**Expiration Date:** June 5, 2004

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## Natural Resources

### (Fish, Game, etc., Chs. NR 1-)

Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

**Publication Date:** September 11, 2003  
**Effective Date:** September 11, 2003  
**Expiration Date:** February 8, 2004  
**Hearing Date:** October 13, 2003  
**Extension Through:** April 7, 2004

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## Public Instruction

Rules were adopted revising **ch. PI 5**, relating to high school equivalency diplomas and certificates of general educational development.

### Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

1. The GED Testing Service modified the GED test content and the standard score scale used to determine passing scores dramatically from the previous test series causing an inconsistency with the current scoring requirements under ch. PI 5. The emergency rule reflects the current national GED test score of not less than 410 on each of the five tests, with an average of 450 on the five tests in the battery.

2. 2003 Wisconsin Act 33, the 2003–2005 biennial budget, eliminated general purpose revenue (GPR) used to support GED program administration and created a provision allowing the state superintendent to promulgate rules establishing fees for issuing a GED certificate or HSED. Act 33 presumed that GED program costs previously funded by GPR would be paid for by revenue fees generated as of January 1, 2004.

The department is issuing this emergency rule in order to ensure compliance with the more rigorous score standards and to ensure adequate funding for the program.

A corresponding permanent rule, Clearinghouse Rule 03–102, was developed with public hearings held on December 11 and 15, 2003. The department has had the benefit of reviewing public comments and the Clearinghouse Report prior to issuing this emergency rule.

**Publication Date:** January 2, 2004  
**Effective Date:** January 2, 2004  
**Expiration Date:** May 31, 2004  
**Hearing Date:** February 13, 2004

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## Revenue

Rule adopted revising **s. Tax 18.07**, relating to the 2004 assessment of agricultural land.

### Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), Stats., the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5–year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

**Publication Date:** October 3, 2003  
**Effective Date:** October 3, 2003  
**Expiration Date:** March 1, 2004  
**Hearing Date:** December 16, 2003

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## Workforce Development (Workforce Solutions, Chs. DWD 11–59)

Rules adopted revising **ch. DWD 59**, relating to the child care local pass–through program.

### Finding of emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass–through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state’s federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass–through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low–income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass–through program by 86%. Chapter DWD 59 requires a 2–step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass–through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low–value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees’ initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay–off staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and spent within the federal fiscal year of October 1 to September 30.

**Publication Date:** October 7, 2003  
**Effective Date:** October 7, 2003  
**Expiration Date:** March 5, 2004  
**Hearing Date:** November 12, 2003

**Publication Date:** August 5, 2003  
**Effective Date:** August 5, 2003  
**Expiration Date:** January 2, 2004  
**Hearing Date:** October 27, 2003  
**Extension Through:** March 1, 2004

### **Workforce Development (Civil Rights, Chs. DWD 218–225)**

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

#### **Finding of emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

### **Workforce Development (Public Works Construction, Chs. DWD 290–294)**

Rules adopted amending **ss. DWD 290.155 (1), 293.02 (1), and 293.02 (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

#### **Finding of emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

**Publication Date:** December 18, 2003  
**Effective Date:** January 1, 2004  
**Expiration Date:** May 30, 2004  
**Hearing Date:** February 19, 2004

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## Scope statements

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### Corrections

#### Subject

To revise ch. DOC 310, relating to complaint procedures for inmates confined in state adult correctional facilities simultaneously and in conjunction with the Department of Health and Family Service's repeal and recreation of ch. HFS 97 to largely reflect the application to and use by the Department of Health and Family Services of ch. DOC 310 for complaints by inmates of the Wisconsin Resource Center.

*Objective of the rule.* The Department of Corrections proposes to amend ch. DOC 310 to better reflect the involvement of the DHFS in the handling of complaints of inmates at the Wisconsin Resource Center. The Department of Health and Family Services is also proposing in a separate but simultaneous rule making effort to repeal and recreate ch. HFS 97 to address the differences in the ch. DOC 310 complaint procedures resulting from DHFS's involvement.

Pursuant to s. 46.056, Stats., the Department of Health and Family Services (DHFS) administers the Wisconsin Resource Center (WRC) as a correctional institution that provides psychological evaluations, specialized learning programs, training and supervision for inmates whose behavior presents a serious threat to themselves or others in state prisons and whose mental health needs can be met at WRC. The Wisconsin Resource Center is a hybrid facility. It is operated by DHFS, but serves persons under the authority of the Department of Corrections (DOC). Moreover, the correctional officers who provide security at WRC are employees of DOC.

Both DHFS and DOC have established procedures in administrative rules governing the submission and processing of inmate complaints. Inmate complaints regarding staff actions are handled by DOC under ch. DOC 310 because, pursuant to s. 46.056 (2), Stats., the correctional officers providing security at WRC are employees of DOC. Complaints about WRC issues such as facility rules and conditions are within the purview of DHFS to administer, and DHFS established ch. HFS 97 to address such complaints. DHFS, however, never intended its role to supercede the DOC review process under ch. DOC 310.

Given the hybrid nature of WRC, DHFS collaborates with DOC in responding to WRC inmate complaints. The close working relationship required between the agencies is why DHFS has sought to parallel and largely replicate in ch. HFS 97 the process DOC uses under ch. DOC 310. To date, both agencies are satisfied with the process and the required working relationship. However, this dual agency involvement and administration is complicated when ch. DOC 310 is changed, thereby requiring DHFS to modify ch. HFS 97. DOC recently made minor corrections to ch. DOC 310, which again have resulted in ch. HFS 97 no longer being "in synch" with ch. DOC 310. Moreover, maintenance of both sets of largely similar rules is needlessly confusing. Therefore, DHFS and DOC have jointly determined that the interests and input of DHFS can be best accommodated by repealing and recreating ch. HFS 97 to address only those differences in the ch. DOC 310 complaint procedures

resulting from DHFS involvement, and slightly modifying ch. DOC 310.

The Department of Corrections is committed to maintaining the good existing working relationship with DHFS. To that end, DHFS and DOC intend to establish a Memorandum of Understanding that will ensure that DHFS continues to be informed and involved regarding deciding complaints arising from inmates at WRC. The agencies intend to coordinate the concurrent promulgation of the requisite changes to administrative rules to improve the administration of the WRC inmate complaint process. DHFS will propose to repeal and recreate ch. HFS 97 and DOC will propose to make a minor change to ch. DOC 310 to reflect DHFS' role in responding to inmate complaints that involve issues in which DHFS should have a role. Through these actions, the agencies will:

1. Simplify administration and minimize administrative costs.
2. Eliminate the need for coordination and duplication of effort to keep the rules synchronized.
3. Eliminate any question about the applicability of ch. DOC 310 to WRC inmates, since the inmates continue to be a DOC responsibility.
4. Allow DOC to continue to be involved in decision-making regarding inmate complaints at WRC for the purposes of continuity.
5. Reduce the current confusion that s. HFS 97.14 causes by bringing the DHFS Secretary into the decision-making process, but not linking that decision to that of the DOC Secretary.

#### Statutory authority

Sections 301.02, 301.03 (2) and 227.11 (2), Stats.

#### Staff time required

Less than 20 hours of Department staff time to develop and promulgate the rulemaking order.

### Health and Family Services

#### Subject

To repeal and recreate ch. HFS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center simultaneously and in conjunction with the Department of Correction's modification of ch. DOC 310 to reflect the application to and use by the Department of Health and Family Services of ch. DOC 310 for complaints by inmates of the Wisconsin Resource Center.

#### Policy analysis

Pursuant to s. 46.056, Stats., the Department (DHFS) administers the Wisconsin Resource Center (WRC) as a correctional institution that provides psychological evaluations, specialized learning programs, training and supervision for inmates whose behavior presents a serious threat to themselves or others in state prisons and whose mental health needs can be met at WRC. The Wisconsin Resource Center is a hybrid facility insofar as it is operated by DHFS, but serves persons under the authority of the Department of Corrections (DOC). Moreover, the

correctional officers providing security at WRC are employees of DOC.

Both DHFS and DOC have established procedures in administrative rules governing the submission and processing of inmate complaints. Inmate complaints regarding staff actions are handled by DOC under ch. DOC 310 because, pursuant to s. 46.056 (2), Stats., the correctional officers providing security at WRC are employees of DOC. Complaints about WRC issues such as facility rules and conditions are within the purview of DHFS to administer, and DHFS established ch. HFS 97 to address such complaints. DHFS, however, never intended its role to supercede the DOC review process under ch. HFS 310.

Given the hybrid nature of WRC, DHFS collaborates with DOC in responding to WRC inmate complaints. The close working relationship required between the agencies is why DHFS has sought to parallel and largely replicate in ch. HFS 97 the process DOC uses under ch. DOC 310. To date, both agencies are satisfied with the process and the required working relationship. However, this dual agency involvement and administration is complicated when DOC 310 is changed, thereby requiring ch. HFS 97 to be changed. DOC recently made minor corrections to ch. DOC 310, which again have resulted in ch. HFS 97 no longer being "in synch" with ch. DOC 310. Moreover, maintenance of both sets of largely similar rules is needlessly confusing. Therefore, DHFS and DOC have jointly determined that the interests and input of DHFS can be best accommodated by repealing and recreating ch. HFS 97 to address only those differences in the ch. DOC 310 compliant procedures resulting from DHFS's involvement, and slightly modifying ch. DOC 310.

The Department of Corrections is committed to maintaining the good existing working relationship with DHFS. To that end, DHFS and DOC intend to establish a Memorandum of Understanding that will ensure that DHFS continues to be informed and involved regarding deciding complaints arising from inmates at WRC. The agencies intend to coordinate the concurrent promulgation of the requisite changes to administrative rules to improve the administration of the WRC inmate complaint process. Through the repeal and recreation of ch. HFS 97 and the minor modification of DOC 310, the agencies will:

1. Simplify administration and minimize administrative costs.
2. Eliminate the need for coordination and duplication of effort to keep the rules synchronized.
3. Eliminate any question about the applicability of ch. DOC 310 to WRC inmates, since the inmates continue to be a DOC responsibility.
4. Allow DOC to continue to be involved in decision-making regarding inmate complaints at WRC for the purposes of continuity.
5. Reduce the current confusion that s. HFS 97.14 causes by bringing the DHFS Secretary into the decision-making process, but not linking that decision to that of the DOC Secretary.

#### **Statutory authority**

Sections 46.056 (1) and 227.11 (2), Stats.

#### **Staff time required**

Less than 20 hours of Department staff time to develop and promulgate the rulemaking order.

## **Health and Family Services**

### **Subject**

Ch. HFS 158, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

### **Policy analysis**

Under section 254.41 of the Wisconsin statutes, the Department of Health and Family Services is responsible for monitoring radiation emissions around nuclear plants operating in or near Wisconsin. The Department assesses a fee to operating nuclear plants in Wisconsin that supports the Department's and local health agencies' collection of emissions and analysis activities. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the consumer price index. Consequently, the current fee is \$55,940. The Department's monitoring costs over the past 13 years have risen at a rate exceeding that of the consumer price index. In addition, federal and other funding sources that also supported monitoring activities have either been eliminated or reduced. Consequently, the fee has become the primary funding source for monitoring activities. In response to these revenue losses, the Department reduced the scope of monitoring activities rather than raise the base fee in ch. HFS 158. However, the Department cannot further reduce monitoring activities without compromising minimal national standards. Therefore, to continue to monitor activities at a minimum level consistent with national standards, the Department will propose increasing the base fee in ch. HFS 158 to \$95,000..

### **Statutory authority**

Section 254.41, Stats.

### **Staff time required**

Approximately 8 hours of Radiation Protection Section staff time to develop the rules in preparation for Department review. The Department does not intend to use an advisory group to assist with rule drafting.

## **Natural Resources**

### **Subject**

The program to pay for damage done by species listed as Endangered or Threatened in Wisconsin was established in the 1983-85 budget bill (ss. 20.370 (1) (fs) Wis Stats.). Funds for these payments come from the Endangered Resources Voluntary Payments Fund (i.e. the "Tax Check-off"). The 1999-01 budget bill added Endangered Resources (Wolf) License Plate funding and added that damage by Gray Wolves will be paid for by this fund even after wolves are delisted.

To date, the WI DNR has settled 179 damage claims totaling \$ 352,056.62. The majority of these claims, 144, - (totaling \$ 312,266.83) have been paid for damage done by gray wolves (See Attachment 1- Wolf Damage Summary).

The Endangered Resources Program has administered this program since 1985 without permanent rules because the program was very small, the species on the state's Endangered and Threatened list would change from year to year, and there was no controversy about the program. There is now a need for permanent rules because wolf damage has been made a permanent part of the payment program and there is significant public controversy about the wolf damage payment program.

### Policy analysis

The Wisconsin wolf population has increased from just 25 animals in 1980 to 335 in 2003. From 1985 to 1998 wolf damage payments ranged from \$200.00 to \$ 12, 000.00 per year. Wolf damage payments from 1999 to 2004 have averaged \$ 43,800 per year. We can anticipate that wolf damage claims will be reduced somewhat in the future now that the Department has the authority to destroy wolves that are causing depredations to livestock. However, 37% of all wolf damage payments are paid to reimburse dog owners for killed or damaged dogs. Most all of these dogs are hound dogs killed or injured by wolves while the dogs are pursuing legal game animals such as bear, bob cat and coyote. Now that wolves have been recovered in Wisconsin, some legislators, stakeholders, and contributors to the Endangered Resources fund are questioning the need to continue to pay for hound dogs. Contributors to the Endangered Resources fund have also questioned the current policy of paying for missing livestock.

The Wisconsin Wolf Stakeholders Group discussed the need for permanent Administrative rules to govern the Department's payment program at a meeting in Wausau on October 25, 2003. They concluded that the following list of topics need to be addressed by any proposed Administrative Rule:

- Livelihood versus recreation
- Compensation/consumption sports
- Seek financial partnerships to help with payments
- Sources of money used for payments
- What types of property are eligible for payments
- Rule should limit certain types of money (to exclude some specific fund)
  - Limitations to reimbursement
  - Criteria to be applied to judge
  - Incentives for prevention measures
  - Non-lethal measures
  - Caps on payment
  - Reporting requirements
  - Value determination
  - Verification
  - Land Ownership
  - Owner negligence/responsibility
  - Interdepartmental cooperation
  - Population cap – relationship between wolf numbers and payments
    - Game farm situation
    - Percent of ER funds to pay claims
    - Look at statute change

The Bureau of Endangered Resources would like permission to conduct public input sessions and work with the Wisconsin Wolf Stakeholders group and the Wisconsin Wolf Science Team to draft proposed rules to govern this payment program.

### Statutory authority

ss. 20.370 (1)(fs) and 227.11, Stats.

### Staff time required

Approximately, 360 hours of staff time will be needed by the Department.

### Federal regulatory analysis

The federal government does not pay for damages done by wildlife and does not have any regulations about state payment programs. This includes damage caused by species listed as Endangered or Threatened by the U.S. Fish & Wildlife Service.

The federal government does have a program to investigate damage complaints. The U.S. Department of Agriculture-APHIS-Wildlife Services agency conducts on site inspections of reported depredations in the state of Wisconsin. Wildlife Services provides the WI DNR with an independent evaluation of the incident and an estimate of the value of the loss. The WI DNR uses this information in our decision to pay and the amount of reimbursement but the WI DNR is not obligated by the Wildlife Service report.

## Natural Resources

### Subject

The NR 700 rule series governs site investigations and cleanup activities. Many of the revisions being proposed will update the sampling and laboratory requirements necessary for a complete site investigation and verification that a cleanup is working. Specific changes suggested are eliminating the requirement for analysis of gasoline range organics (GRO) and diesel range organics (DRO), eliminating the soil standard for GRO/DRO; revising reporting limits to the detection limit for all compounds; removing product names from sample storage devices and allowing for alternative storage devices; allowing for the use of preservation method SW-846 5035; updating chs. NR 720/746 to be consistent with ch. NR 726 requirements regarding inclusion of sites exceeding soil standards on the GIS Registry of Closed Remediation Systems, updating both statutory and rule citations and revising a standard format for site investigation reports to allow for more efficient review.

### Policy analysis

GRO/DRO was originally used as a screening tool during the initial stages of a site investigation due to a lower cost. Compound specific levels are now obtainable at a similar price as for GRO, and are still needed for site characterization, determination of remedial options and for site closure. There is no longer a need to use DRO/GRO as a screening tool. There is also no corresponding groundwater standard for GRO/DRO.

Changing the reporting limit to be equal to the detection limit for all compounds will also be a change in policy. Doing so will provide more accurate data in the reporting of releases and in defining the effectiveness of cleanup actions. Allowing preservation method SW-846 5035 will change policy, as currently methanol preservation of soil samples for VOC analysis is required. Changing this method will result in a more representative idea of site conditions, and will reduce the use of hazardous materials. An approval process for allowing the use of storage devices is proposed instead of listing acceptable devices in rule, so as to allow a greater range of devices as they come onto the market. The change is needed to remove product names, which discriminates against other acceptable methods.

Currently, sites closing under ch. NR 746 are exempted from ch. NR 720, Soil Standards. Revising the rules to require that these sites, while closing under ch. NR 746, must also be included on the GIS Registry for sites with residual soil contamination will ensure consistency with other sites with residual soil contamination closing under ch. NR 726. As

very few sites have closed under ch. NR 746, we do not expect this change to be controversial.

#### **Statutory authority**

ss. 227.11 (2) (a), 281.19 (1), 289.05 (1), 289.06, 291.05 (6) (f), 292.11 and 292.31, Stats.

**Summary/Comparison of Federal Regulations:** There are no comparable existing or proposed federal requirements that address the issues outlined in these proposed rule revisions.

#### **Staff time required**

Approximately 200 hours will be needed.

## **Public Service Commission**

### **Subject**

The proposed rule will update and revise ch. PSC 135, Wis. Admin. Code, relating to the natural gas pipeline safety code, including updates to the state additions to the pipeline safety code.

*Objective of the rules.* Under an agreement with the US Department of Transportation, Office of Pipeline Safety, the Commission enforces the federal pipeline safety regulations for Wisconsin's natural gas utilities. As part of this agreement, the Commission is required to adopt changes to 49 CFR Part 192, the federal pipeline safety regulations, as state rules. Under this agreement, the Commission also has the authority to make additions to the federal code that are more stringent than the federal standards. The Commission in the past has made a number of state additions to the federal code. For example, Wis. Admin. Code PSC 135.723 sets out leak survey inspection criteria and schedules that are more detailed and more frequent than those found in the federal code provisions.

Although the Commission regularly adopts the federal code revisions – the most recent changes were adopted in December, 2003 – it has been 14 years since a comprehensive review of the state additions to the natural gas pipeline safety regulations has been conducted. Since that time there have been many changes in the gas industry across the country and in Wisconsin.

### **Policy analysis**

PSC ch. 135, Gas Safety, was last comprehensively reviewed and revised in 1990. During that time period the natural gas utility industry has seen many changes. For example, the use of automated meter reading systems (AMR) has been adopted by several Wisconsin utilities. AMR uses radio transmissions to remotely read the gas meters, and as a result substantially reduces the number of times a gas company employee actually sees a gas meter or its setting. In the past, a company employee would see the gas meter nearly every month when obtaining the meter reading for billing purposes. This monthly contact ensured that any damage, corrosion or encroachment of the meter and its installation would be detected. With the implementation of AMR, a utility employee would need to view most gas meters only

twice in a five year period to comply with the current federal safety code.

The natural gas industry has been, like other businesses, subject to increasing pressures to control costs and expenses. The Operations and Maintenance functions of the utilities have been subject to the same pressures to reduce staff and expenditures as the rest of the utility functions. This may have had an impact on how utilities approach compliance with the federal pipeline safety code. Commission staff has observed a trend at most of our natural gas utilities of just meeting the minimum federal standards. For example, some Wisconsin natural gas utilities have previously conducted leak surveys of service lines on a three year schedule; they now do the surveys on a five year schedule where allowed, because this is the minimum federal standard.

Another example is the practice of allowing construction contractors that perform work for gas utilities to inspect their own work. The federal code requires that the utility inspect the work being done on its system, such as the installation of new services and mains. The utilities use their own employees to inspect and certify that the construction meets their standards and is being installed according to their requirements. Today, however, there are at least two Wisconsin utilities that allow limited self-inspection by their contractors. In 1990, when the state additions to the safety code were last comprehensively revised, to the best of staff's knowledge there were no gas utilities in the state allowing this practice. Staff has worked to limit this practice, sending interpretation letters to our gas utilities stating that we feel this practice presents a possible conflict of interest for the contractor, and in staff's opinion does not constitute an effective inspection. It would be much easier to limit this practice if there were a specific rule regulating it.

In general, there have been practices put into place by natural gas utilities in the last 14 years that may not contribute to a higher level of pipeline safety. The existing state additions to the pipeline safety rules should be reviewed and revisions made, where appropriate, to improve pipeline safety in Wisconsin.

This rulemaking will also be used to adopt any federal revisions that have been made since November 25, 2003, the date of the last federal revisions that the has Commission adopted. The Commission will also review and consider adopting by reference CFR 49 Part 190, Subparts A and B, and Part 191 of the federal pipeline safety code. These provisions encompass definitions, investigation and enforcement actions and reporting requirements under the federal code that have not been adopted as part of the state code thus far.

### **Statutory authority**

Sections 196.02 (3), 196.745 and 227.11 (2), Stats.

### **Staff time required**

The Commission estimates approximately 400 hours of staff time will be required to develop these rules. No additional resources are likely to be needed in order to complete this project.

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## Submittal of rules to legislative council clearinghouse

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*Please check the Bulletin of Proceedings – Administrative Rules  
for further information on a particular rule.*

### Commerce

#### Rule Submittal Date

On February 3, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects chs. Comm 61 to 65, relating to construction of public buildings and places of employment.

#### Agency Procedure for Promulgation

The department will hold a public hearing on March 16, 2004.

#### Contact

Sam Rockweiler  
608 266-0797

### Gaming

#### Rule Submittal Date

On February 12, 2004, the Department of Administration submitted a proposed rule order to repeal s. Game 23.02 (2), Wis. Admin. Code, to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

Statutory authority: ss. 16.004 (1), 227.11 (2) (a), 562.02 (1) (a) and 562.065, Stats.

Statutes Interpreted: ss. 562.02 and 562.065, Stats.

The proposed rule repeals s. Game 23.02 (2), relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

An emergency rule that is identical to the proposed rule order became effective on January 8, 2004.

#### Agency Procedure for Promulgation

The department will hold a public hearing on both the emergency rule and proposed rule order on March 16, 2004, at 1:00 p.m. The hearing will be located at Western Racine County Services Center, Eppers Room, 209 N. Main St., Burlington, WI. The Division of Gaming is primarily responsible for promulgation of these rules.

#### Contact

If you have any questions regarding the proposed rule, please contact:

Daniel Subach  
Department of Administration – Division of Gaming  
608 270-2539

### Medical Examining Board

#### Rule Submittal Date

On February 11, 2004, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 448.965, Stats.

The proposed rule-making order relates to the repeal of ch. Med 19, relating to the certification regulation of occupational therapists and occupational therapy assistants.

#### Agency Procedure for Promulgation

A public hearing is not required.

#### Contact

Pamela Haack, Paralegal  
Office of Administrative Rules  
608 266-0495

### Natural Resources

#### Rule Submittal Date

On February 4, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-order relates to chs. NR 10 and 11, hunting and trapping regulation changes.

#### Agency Procedure for Promulgation

A public hearing will be held April 12, 2004.

#### Contact

Kurt Thiede  
Bureau of Wildlife Management  
608 267-2452

### Natural Resources

#### Rule Submittal Date

On February 16, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-order relates to chs. NR 10, 12 and 19, control and management of chronic wasting disease (CWD).

#### Agency Procedure for Promulgation

Public hearings will be held March 16, 17 and 18, 2004.

**Contact**

Kurt Thiede  
Bureau of Wildlife Management

**Natural Resources****Rule Submittal Date**

On February 4, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule–order relates to ch. NR 19, permitting the use of natural bodies of water as fish farms.

**Agency Procedure for Promulgation**

Public hearings will be scheduled at a later date.

**Contact**

Liesa Nesta  
Bureau of Fisheries Management and Habitat Protection  
608 266–2997

**Natural Resources****Rule Submittal Date**

On February 4, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule–order relates to chs. NR 20, 23 and 26, fishing on the inland, outlying and boundary waters of Wisconsin.

**Agency Procedure for Promulgation**

A public hearing will be held April 12, 2004.

**Contact**

Patrick Schmalz  
Bureau of Fisheries Management and Habitat Protection  
608 266–8170

**Natural Resources****Rule Submittal Date**

On February 4, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule–order relates to s. NR 50.09, snowmobile trail grant program.

**Agency Procedure for Promulgation**

A public hearing will be held March 24, 2004.

**Contact**

Larry Freidig  
Bureau of Community Financial Assistance  
608 266–5897

**Natural Resources****Rule Submittal Date**

On February 4, 2004, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule–order relates to ch. NR 168, administration of the brownfield site assessment grant program.

**Agency Procedure for Promulgation**

A public hearing will be held March 16, 2004.

**Contact**

Michael Prager  
Bureau of Remediation and Redevelopment  
608 261–4927

**Psychology Examining Board****Rule Submittal Date**

On February 16, 2004, the Psychology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 445.065, 455.08 and 455.09, Stats.

The proposed rule–making order relates to the definitions of client and psychological treatment, degree requirements, interim determination of degree requirements met, continuing education courses and professional conduct.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on March 17, 2004, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI 53702.

**Contact**

Joel Garb, Paralegal  
Office of Administrative Rules  
608 261–2385

**Veterinary Examining Board****Rule Submittal Date**

On February 11, 2004, the Veterinary Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

The proposed rule–making order relates to admission time for national examinations and post graduate training permits..

**Agency Procedure for Promulgation**

A public hearing is required and will be held on March 24, 2004, at 9:30 a.m. in room 179A, 1400 East Washington Avenue, Madison, WI 53702.

**Contact**

Pamela Haack, Paralegal  
Office of Administrative Rules  
608 266–0495

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## Rule-making notices

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### Notice of Hearing Commerce

#### (Commercial Building Code, Chs. Comm 61–65) [CR 04–016]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15), 101.12 (1), 101.128 (2), and 101.973 (1), Stats., the Department of Commerce will hold a public hearing on proposed rules relating to construction of public buildings and places of employment.

The public hearing will be held as follows:

<u>Date &amp; Time</u>	<u>Location</u>
<b>March 16, 2004</b> (Tuesday) Commencing at 9:30 a.m.	Thompson Commerce Center Third Floor, Room 3B 201 West Washington Ave. Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **March 23, 2004**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Sam Rockweiler, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at [srockweiler@commerce.state.wi.us](mailto:srockweiler@commerce.state.wi.us).

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

#### Analysis Prepared by Department of Commerce

Statutory Authority: ss. 101.02 (1) and (15), 101.12 (1), 101.128 (2), and 101.973 (1), Stats.

Statutes Interpreted: ss. 101.02 (1) and (15), 101.12 (1), 101.125, 101.128 (2), and 101.973 (1), Stats.

Under the statutes cited, the Department protects public health, safety, and welfare by promulgating comprehensive construction requirements for public buildings and places of employment. These requirements are primarily contained in chs. Comm 61 to 65, which is the Wisconsin Commercial Building Code. The current version of this Code became effective on July 1, 2002.

Subsequent to adoption of the 2002 version of this Code, numerous improvements have occurred in several of the nationally recognized standards that are incorporated by reference into this Code, particularly the building code requirements developed by the International Code Council®.

These proposed rules would update chs. Comm 61 to 65 to reflect many of these improvements, codify several interim approvals the Department has issued for alternate design

methods and standards, and accommodate various other clarifications that are expected to somewhat simplify compliance with this comprehensive code.

The proposed rules would also expand when fire protection systems must receive plan approval from the Department or an agent, to include systems for residential occupancies containing more than two dwelling units, where the occupants are primarily permanent in nature.

These rule changes have been developed with input from the Department's Commercial Building Code Council and the Multifamily Dwelling Code Council.

#### Copies of Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at [www.commerce.state.wi.us/SB/SB-HomePage.html](http://www.commerce.state.wi.us/SB/SB-HomePage.html). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearings.

#### Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

#### Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Builders and owners of commercial buildings and places of employment.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Some additional documentation may be needed to obtain approvals from the Department or authorized agents for the fire protection system plans that are addressed by the rules.

3. Types of professional skills necessary for compliance with the rules.

No additional skills.

#### Fiscal Estimate

The Department is promulgating minor changes that primarily relate to administering the Wisconsin Commercial Building Code. These changes are expected to have no major long-term impacts on costs or revenues at either state or local levels. However, the proposed review of automatic fire sprinkler systems in R–2 occupancies would result in a minor increase in revenues at the state level, and at local levels that have accepted delegation of state-level plan review. This review is expected to apply to about 50 construction projects per year, and generate an average review fee of \$500 per project. Sixty percent of the review is expected to occur at the

state level, and 40% is expected to occur at the local level. The Department will assign existing staff to perform the review, so no additional staff will be needed.

## Notice of Hearings

### Corrections

#### [CR 03–124]

NOTICE IS HEREBY GIVEN that pursuant to s. 938.22 (2) (a), Stats., and interpreting ss. 301.36, 301.37, and 938.209, Stats., and 42 USC 5601 to 5761 and 28 CFR Part 31, the department of corrections will hold public hearings to consider the repeal and recreation of rules relating to secure detention facilities and juvenile portions of county jails.

#### Hearing Information

##### Date & Time

**March 29, 2004**

10:00 a.m.

##### Location

Ruth Gilfry Center

Room 103–104 Lower Level

817 Whiting Avenue

Stevens Point, WI 54481

**March 31, 2004**

10:00 a.m.

State Office Building

Room 151

141 N.W. Barstow Street

Waukesha, WI 53188

(262) 521–5320

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by **April 7, 2004**. Written comments should be addressed to: Kathryn R. Anderson, DOC, P.O. Box 7925, Madison, WI 53707–7925.

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707–7925, email: [kathryn.anderson@doc.state.wi.us](mailto:kathryn.anderson@doc.state.wi.us), telephone (608) 240–5049 by March 19, 2004.

#### Analysis Prepared by the Department of Corrections

Statutory authority: s. 938.22 (2) (a), Stats.

Statutes interpreted: ss. 301.36, 301.37 and 938.209, Stats., and 42 USC 5601 to 5761 and 28 CFR Part 31.

The rule:

1. Reorganizes and renumbers the existing chapter DOC 346.

2. Updates citations to include references to chapter 938, Wis. Stats.

3. Updates citation to the federal Juvenile Justice and Delinquency Prevention Act, 42 USC 5601 to 5761, and its regulations, 28 CFR Part 31, to indicate Wisconsin's compliance with the current version of the act and regulations.

4. Creates definitions for the following terms: construction plans, officer, and secure perimeter.

5. Amends definitions for the following terms: family, juvenile, multi–purpose space, and undergarments.

6. Amends the requirements for the operational plan to include policies and procedures concerning disciplinary hearings, release, and searches.

7. Creates a requirement that the facility shall maintain a record of the proceedings for the annual meeting.

8. Amends the information which the facility is required to maintain on an admitted juvenile to include date and time of admission, authority for admission, and date and time of release.

9. Amends the timeframe for reporting to the department major occurrences from 48 to 24 hours.

10. Amends the reporting requirement for suicide attempts to those situations where the juvenile is admitted to a hospital or if the juvenile is treated for a life–threatening injury.

11. Clarifies that juveniles may only be admitted to secure detention based on enumerated statutory provisions.

12. Eliminates the reference to the intake worker as a step in the admission process for a secure detention facility.

13. Prohibits the holding of a person who is 18 years of age or older in a secure detention facility or a juvenile portion of a county jail.

14. Deleted requirement to report to the department violations of s. 938.067, Wis. Stats., powers and duties of intake workers.

15. Creates a requirement that facilities develop policies and procedures addressing the release of juveniles from the facility.

16. Clarifies the procedure for the submission and approval of construction plans.

17. Limits the use of receiving cells not to exceed 72 continuous hours.

18. Limits the use of holding rooms not to exceed 24 continuous hours.

19. Requires facilities which are newly built or substantially remodeled after the effective date of the rule to install anti–rollout plates on all upper bunks.

20. Creates a requirement for storage space and visiting space but does not impose any dimensional requirements.

21. Creates a requirement for classroom space. This requirement only applies to facilities that are newly constructed or substantially remodeled after the effective date of the rule.

22. Creates a requirement that if medical or dental services are provided in the facility, there shall be sufficient space, equipment, supplies and materials for the performance of the services in a confidential and private manner.

23. Creates a minimum dimensional requirement for outdoor recreation space if a facility provides for outdoor recreation.

24. Reduces the frequency of fire inspections from semi–annually to annually.

25. Creates requirement of meeting ch. HFS 190 which is consistent with ch. DOC 350 and which is consistent with current practice.

26. Requires specific training on the subjects of suicide prevention, mental health, crisis intervention, medications, use of restraints and control devices, and communication skills.

27. Requires that 8 hours of the current annual 24–hour recertification training address suicide prevention, mental health, crisis intervention, and medications.

28. Requires that the second staff person on duty must be an officer, not an administrative or clerical person.

29. Requires that a facility include a policy and procedure on the issue of delivery of medications.

30. Permits a facility to create a policy for the supervised self–administration of insulin injections.

31. Requires TB testing for juveniles who are held beyond one week if prescribed a medical professional.

32. Permits a juvenile to abstain from eating foods which violate the juvenile's religion and requires the facility to substitute from other available food from the menu served at the meal as long as the substitution is nutritious and meets generally accepted nutritional standards.

33. Prohibits audio monitoring of professional visits.

34. Clarified language regarding the observation of juveniles.

35. Creates requirement for facilities to develop policies and procedures relating to searches (juveniles, staff, and property).

36. Removes the requirement to report damage to a facility, which compromises safety or security.

37. Amends the list of restraints and control devices to include restraint chairs.

38. Creates a subchapter which addresses the use of juvenile portions of a county jail.

39. Clarifies that juveniles may only be admitted to a juvenile portion of a county jail for limited periods of time.

#### Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

#### Fiscal Estimate

Although the Department anticipates additional workload related to policy development, it does not anticipate additional costs. Costs to individual counties cannot be determined at this time, but it is estimated that they will be minimal.

#### Contact Person

Paper copies of the rule and the fiscal estimate may be obtained without cost from Kathryn Anderson, DOC, P.O. Box 7925, Madison, WI 53707-7925, telephone (608) 240-5049, email [kathryn.anderson@doc.state.wi.us](mailto:kathryn.anderson@doc.state.wi.us). Copies will also be available at the public hearings.

### Notice of Hearing Gaming [CR 04-019]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 227.11 (2) (a), 562.02 (1) and 562.065, Stats., and interpreting ss. 562.02 and 562.065, Stats., the Department of Administration will hold a public hearing on both the emergency rule and proposed permanent rule order repealing s. Game 23.02 (2), relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

#### Hearing Information

**Date:** March 16, 2004  
**Time:** 1:00 p.m.  
**Location:** Western Racine County Services Center  
Eppers Room  
209 N. Main St.  
Burlington, WI

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Daniel Subach, Department of Administration—Division of Gaming,

PO Box 8979, Madison, WI 53708-8979. Written comments must be received by **March 26, 2004**, to be included in the record of rule-making proceedings.

#### Analysis Prepared by the Department of Administration

Statutory Authority: ss. 16.004 (1), 227.11 (2) (a), 562.02 (1) (a) and 562.065, Stats.

Statutes Interpreted: ss. 562.02 and 562.065, Stats.

Section Game 23.02 (2) was created in the Department's rulemaking order (03-070). The Department proposes repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

#### Text of Proposed Rule

SECTION 1: Game 23.02 (2) is repealed.

#### Fiscal Estimate

The repeal of this rule will not have any fiscal impact on any governmental entity.

#### Initial Regulatory Flexibility Analysis

There will be no significant impact on small businesses.

#### Contact Person

If you have any questions regarding the rule amendments, please contact:

Daniel Subach  
Department of Administration – Division of Gaming  
2005 W. Beltline Hwy., Suite 201  
PO Box 8979  
Madison, WI 53708-8979  
Telephone (608) 270-2539

### Notice of Proposed Rulemaking Medical Examining Board

#### [CR 04-017]

NOTICE IS HEREBY GIVEN that pursuant to ss. 15.08 (5) (b), 227.11 (2) and 448.965, Stats., and interpreting 1999 Wisconsin Act 180, and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Medical Examining Board will adopt the following rules as proposed in this notice, without

public hearing unless, within 30 days after publication of this notice on **March 1, 2004**, the Medical Examining Board is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### **Analysis Prepared by the Department of Regulation and Licensing**

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.965, Stats.

Statutes interpreted: 1999 Wisconsin Act 180.

1999 Wisconsin Act 180, effective June 2, 2000, created the Occupational Therapists Affiliated Credentialing Board and made numerous substantive changes to the licensure and regulation of occupational therapists and occupational therapy assistants. The Occupational Therapists Affiliated Credentialing Board thereafter promulgated administrative rules required by the new law, which became effective January 1, 2003, and are found at Chs. OT 1 to 5. The administrative rules found at ch. Med 19, which governed the licensure of occupational therapists and occupational therapy assistants before creation of the new affiliated credentialing board, were not, through oversight, repealed.

### **Text of Rule**

SECTION 1. Chapter Med 19 is repealed.

### **Fiscal Estimate**

This rule change will have no fiscal impact on the Department of Regulation and Licensing.

### **Initial Regulatory Flexibility Analysis**

These proposed rules will be reviewed by the department's Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

### **Copies of Rule and Contact Person**

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935, (608) 266-0495.

## **Notice of Hearings**

### **Natural Resources**

#### **(Fish, Game, etc., Chs. NR 1—)**

#### **[CR 04-011 and CR 04-012 ]**

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09 (2), 29.014, 29.089 (3) and 227.11, Stats., interpreting ss. 29.089 (3), 29.164 (2), 29.184 and 29.192 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10 and 11, Wis. Adm. Code, relating to hunting and trapping regulation changes. In addition, pursuant to ss. 23.09 (2) (c), 29.014 (1), 29.041, 29.614 and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1) and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20, 23 and 26, Wis. Adm. Code, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

### **Analysis Prepared by Dept. of Natural Resources**

The proposed rules for chs. NR 10 and 11:

1. Repeal the prohibition on Canada goose hunting on the Saturday, Sunday and Monday of the Labor Day holiday weekend.

2. Extend the fall turkey season to 40 consecutive days by opening the season on October 1.

3. Clarify that Willow River and Kinnickinnic state parks have a 9-day deer gun season.

4. Clarify the muzzleloader and firearm seasons at the Loew Lake unit of the Kettle Moraine state forest.

5. Extend the muzzleloader deer season to 10 days in state parks where the muzzleloader season is offered to be consistent with the statewide muzzleloader deer season.

6. Create a 9-day deer gun season at Governor Thompson state park.

7. Modify the muskrat, fisher and mink seasons to provide consistency in season dates and lengthen the seasons for these species.

8. Extend the deadline for purchasing a class A bear hunting license to August 1.

9. Allow legally harvested deer to be skinned prior to registration.

10. Allow dogs to be used for hunting turkeys during the fall turkey hunting season.

11. Extend the late archery season by three days in state parks where late archery deer hunting is allowed.

12. Create three new turkey management zones.

13. Eliminate sharp-tailed grouse closed areas in northwestern Wisconsin.

NOTICE IS HEREBY FURTHER GIVEN THAT the proposed rules for chs. NR 20, 23 and 26 include:

1. Increasing the minimum length limit from 34 to 45 inches for muskellunge on the Wisconsin River from the Castle Rock dam in Adams and Juneau Counties upstream through Wood County, to the DuBay dam in Portage County.

2. Reducing the daily bag limit from 25 in total to 10 in total for catfish on the Lower Wisconsin River from the Wisconsin Dells dam in Columbia and Sauk Counties downstream through Dane, Iowa, Richland, Grant and Crawford Counties.

3. Eliminating motor trolling on the Wolf River from its mouth at Lake Poygan upstream to the dam in the city of Shawano and all its tributaries upstream to the first dam, including Cincoe and Partridge Lakes in Winnebago, Waupaca and Shawano Counties.

4. Increasing the minimum length limit for muskellunge on the Menominee River (Wisconsin/Michigan boundary waters) from the Hattie Street dam downstream to the eastern end of the breakwalls in Green Bay.

5. Standardizing trout regulations across county boundaries in Barron, Dunn, Trempealeau, Jackson, Monroe, Eau Claire and Buffalo Counties.

6. Removing the size restrictions for trout on Knapp pond in Dunn County.

7. Increasing the minimum length limit for lake trout on Black Oak Lake, Vilas County.

8. Reducing the daily bag limit for panfish on Lake Altoona, Eau Claire County.

9. Increasing the minimum length limit and reducing the daily bag limit for bass, reducing the daily bag limit for panfish, and increasing the minimum length limit and reducing the daily bag limit for walleye on Silver Lake, Manitowoc County.

10. Increasing the minimum length limit and decreasing the daily bag limit for bass and reducing the daily bag limit for panfish on Erler Lake, Washington County.

11. Increasing the harvest slot limit for walleye, sauger and hybrids on Yellowstone Lake in Lafayette County.

12. Reducing the minimum length limit and increasing the daily bag limit for walleye, sauger and hybrids in Sand Lake, Rusk County.

13. Eliminating the no minimum length limit for walleye, sauger and hybrids on Rib Lake, Taylor County.

14. Allowing motor trolling in Walworth County.

15. Extending the duration of the Wingra Creek refuge.

16. Establishing two new fish refuges on portions of the Big Eau Pleine River in Marathon County.

17. Establish a new fish refuge on the Little Somo and Tomahawk Rivers in Lincoln Counties.

18. Establishing three new fish refuges on the Little Wolf River in Waupaca County.

19. Establishing a new fish refuge on the Spirit River in Lincoln County.

NOTICE IS HEREBY FURTHER GIVEN that at 7:00 p.m. on Monday, **April 12, 2004**, the County Conservation Congress for each county will hold its election of delegates. Upon completion of the delegate election, the joint spring hearing/Conservation Congress meeting will convene to take comments on the above rule modifications.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on Monday, **April 12, 2004** at 7:00 p.m. at the following locations:

Adams . . . . .	Adams Co. Courthouse County Board Room, 402 Main Street, Friendship
Ashland . . . . .	Ashland Sr. High School, Auditorium 1900 Beaser Avenue, Ashland
Barron . . . . .	Barron Co. Courthouse, Auditorium, 330 E. LaSalle Avenue, Barron
Bayfield . . . . .	Bayfield Co. Courthouse County Board Room, 117 E. 5 <sup>th</sup> Street, Washburn
Brown . . . . .	Southwest High School, Auditorium, 1331 Packerland Drive, Green Bay
Buffalo . . . . .	Alma High School, Auditorium, S1618 STH 35, Alma
Burnett . . . . .	Burnett Co. Government Center Room 165, 7410 County K, Siren
Calumet . . . . .	Calumet Co. Courthouse, Room 25, 206 Court Street, Chilton
Chippewa . . . . .	Chippewa Falls Middle School Auditorium A, 750 Tropicana Blvd., Chippewa Falls
Clark . . . . .	Greenwood High School, Cafetorium, 306 W. Central Ave., Greenwood
Columbia . . . . .	Columbia County Courthouse, 400 DeWitt Street, Portage
Crawford . . . . .	Crawford Co. Courthouse, Courtroom, 200 N. Beaumont Road, Prairie du Chien

Dane . . . . .	Alliant Energy Center (Dane Co. Expo Center), 1919 Alliant Energy Way, Madison
Dodge . . . . .	Horicon City Hall, 404 East Lake Street, Horicon
Door . . . . .	Door Co. Courthouse, Room A150, 421 Nebraska Street, Sturgeon Bay
Douglas . . . . .	Superior Sr. High School 2600 Catlin Avenue, Superior
Dunn . . . . .	Dunn Co. Fish and Game Club, 1900 Pine Avenue, Menomonie
Eau Claire . . . . .	South Middle School, Auditorium, 2115 Mitscher Avenue, Eau Claire
Florence . . . . .	Florence Natural Resource Center, 4842 Forestry Drive, Florence
Fond du Lac . . . . .	Theisen Jr. High School, Auditorium, 525 E. Pioneer Road, Fond du Lac
Forest . . . . .	Crandon High School, 9750 STH 8, Crandon
Grant . . . . .	Lancaster High School, Hillary Auditorium, 806 E. Elm Street, Lancaster
Green . . . . .	Pleasant View Annex, Auditorium, N3150 Hwy. 81, Monroe
Green Lake . . . . .	Green Lake High School, Small Gymnasium, 612 Mill Street, Green Lake
Iowa . . . . .	Dodgeville High School, Gymnasium, 912 W. Chapel Street, Dodgeville
Iron . . . . .	Mercer Community Center, 2448 West Margaret, Mercer
Jackson . . . . .	Black River Falls Middle School, LGI Room, 1202 Pierce Street, Black River Falls
Jefferson . . . . .	Jefferson County Fair Park, Activity Center, 503 N. Jackson Street, Jefferson
Juneau . . . . .	Juneau County Courthouse, County Board Room, 220 E. State St., Mauston
Kenosha . . . . .	Bristol Grade School, Gymnasium, 20121 83 <sup>rd</sup> Street, Bristol
Kewaunee . . . . .	Kewaunee Co. Courthouse, Courtroom, 613 Dodge Street, Kewaunee
La Crosse . . . . .	Onalaska High School, Gymnasium, 700 Hilltop Place, Onalaska
Lafayette . . . . .	Darlington High School, Cafeteria, 11630 Center Hill Road, Darlington
Langlade . . . . .	Langlade Co. Multi-purpose Bldg., 1581 Neva Road, Antigo

Lincoln . . . . .	Tomahawk Elementary School, Auditorium, 1048 E. Kings Road, Tomahawk	Sauk . . . . .	Ringling Theatre, 136 4 <sup>th</sup> Avenue, Baraboo
Manitowoc . . .	UW-Manitowoc, Theater, 705 Viebahn Street, Manitowoc	Sawyer . . . . .	Winter High School Auditorium, 6585 W. Grove Street, Winter
Marathon . . . .	John Muir Middle School, 1400 W. Stewart Avenue, Wausau	Shawano . . . . .	Shawano Community Middle School, LGI, 1050 S. Union Street, Shawano
Marinette . . . .	Crivitz High School, Auditorium, 400 South Avenue, Crivitz	Sheboygan . . .	Sheboygan Falls High School, 220 Amherst Avenue, Sheboygan Falls
Marquette . . . .	Montello High School, Community Room, 222 Forest Lane, Montello	Taylor . . . . .	Taylor Co. Multi-purpose Bldg., Hwys. 64 and 13, Medford
Menominee . . .	Menominee Co. Courthouse, Basement, Courthouse Lane, Keshena	Trempealeau . .	Whitehall City Center, Gymnasium, 36245 Park Street, Whitehall
Milwaukee . . .	Greenfield High School, Auditorium, 4800 South 60 <sup>th</sup> Street, Greenfield	Vernon . . . . .	Viroqua Middle School, Large Lecture Room, Blackhawk Drive, Viroqua
Monroe . . . . .	Sparta Meadowview High School, Cafetorium, 1225 N. Water Street, Sparta	Vilas . . . . .	Sayner Community Center, Golf Course Road, Sayner
Oconto . . . . .	Suring High School, Cafeteria, 411 E. Algoma Street, Suring	Walworth . . . .	Delavan High School, Auditorium, 150 Cummings Street, Delavan
Oneida . . . . .	James Williams Jr. High School, 915 Acacia Lane, Rhinelander	Washburn . . . .	WI Agriculture Research Station, Conference Room, W6646 Hwy. 70, Spooner
Outagamie . . .	Riverview Middle School, Auditorium, 101 Oak Street, Kaukauna	Washington . . .	Washington Co. Fairgrounds, Exhibit Hall, 3000 Hwy. PV, West Bend
Ozaukee . . . . .	Webster Middle School, Auditorium, W75 N624 Wauwatosia Road, Cedarburg	Waukesha . . . .	Waukesha Co. Expo Center, Arena, 1000 Northview Road, Waukesha
Pepin . . . . .	Pepin Co. Government Center, County Board Room, 740 7 <sup>th</sup> Avenue West, Durand	Waupaca . . . . .	Waupaca High School, Auditorium, E2325 King Road, Waupaca
Pierce . . . . .	Ellsworth Senior High School, Auditorium, 323 Hillcrest, Ellsworth	Waushara . . . .	Waushara Co. Courthouse, 2 <sup>nd</sup> Floor Courtroom, 209 S. St. Marie Street, Wautoma
Polk . . . . .	Unity High School, Auditorium, 1908 State Road 46, Balsam Lake	Winnebago . . .	Oshkosh North High School, Auditorium, 1100 W. Smith Avenue, Oshkosh
Portage . . . . .	Ben Franklin Jr. High School, Auditorium, 2000 Polk Street, Stevens Point	Wood . . . . .	Pittsville High School, Auditorium, 5459 Elementary Avenue, Pittsville
Price . . . . .	Price Co. Courthouse, Board Room, 126 Cherry Street, Phillips		
Racine . . . . .	Union Grove Grade School, 1745 Mildrum, Union Grove		
Richland . . . . .	Richland Co. Courthouse, Courtroom, 181 W. Seminary Street, Richland Center		
Rock . . . . .	Loyal Order of Moose Lodge, 2701 Rockport Road, Janesville		
Rusk . . . . .	Ladysmith High School, Auditorium, 1700 Edgewood Ave. East, Ladysmith		
St. Croix . . . . .	Indianhead Tech. College, Cashman Auditorium, 1019 S. Knowles Avenue, New Richmond		

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call AnnMarie Kutzke at (608) 266-2952 with specific information on your request at least 10 days before April 12, 2004.

Written comments on the proposed rule revisions of hunting and trapping regulations may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed rule revisions for fisheries may be submitted to Mr. Pat Schmalz, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked no later than **April 13, 2004**. Written comments will NOT, however, be counted as spring hearing votes.

**Copies of Rule and Contact Person**

A copy of the proposed rules and fiscal estimates may be obtained from Ms. AnnMarie Kutzke, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2952.

**Initial Regulatory Flexibility Analysis**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses.

**Environmental Analysis**

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

**Fiscal Estimate**

The department anticipates no ongoing fiscal impact to the state or to local government.

**Notice of Hearings****Natural Resources****(Fish, Game, etc., Chs. NR 1—)****[CR 04-020]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.063 and 227.11, Stats., interpreting ss. 29.063, 29.177 and 29.361, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 12 and 19, Wis. Adm. Code, relating to the control and management of chronic wasting disease.

**Analysis Prepared by Dept. of Natural Resources**

The proposed rule establishes new boundaries for the herd reduction zone and the CWD eradication zone. The intensive harvest and eradication zones are combined into the CWD eradication zone, which will be identifiable by recognizable boundaries which are also established in the rule. The population goal of zero in the eradication zone has been modified. Tagging and licensing options in the CWD zones are liberalized and specific state park seasons are clarified and the archery season in parks within the CWD zones are extended. Numerous minor housekeeping changes are also included in the rule in order to keep the administrative code up-to-date and uncluttered. The proposed rule also modifies a ch. NR 19 provision that would allow the department to charge a handling fee for free permits or licenses.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

**March 16, 2004** Round Barn Lodge and Restaurant  
Tuesday E4830 US Hwy. 14 & 60  
7:00 p.m. **Spring Green**

Basement Meeting Room  
Portage City Hall  
115 W. Pleasant Street  
**Portage**

Town of Turtle Community Center  
6916 South CTH J  
**Shopiere**

**March 17, 2004** Lincoln Conference Room, Ramada  
Wednesday Inn/White House Supper Club  
7:00 p.m. 1450 Veterans Drive  
**Richland Center**

Basement Conference Room  
Karakahl Country Inn  
1405 Business 18/151 East  
**Mt. Horeb**

Room CO55  
Richard T. Anderson Education Cntr.  
Waukesha County Technical College  
800 Main Street  
**Pewaukee**

**March 18, 2004** RFS Center  
Thursday 18298 Highway D  
7:00 p.m. **Fayette**

Activity Center  
Jefferson Co. Fairgrounds  
503 N. Jackson Street  
**Jefferson**

Auditorium  
Richard Bong State Recreation Area  
26313 Burlington Road  
**Kansasville**

NOTICE IS HEREBY FURTHER GIVEN that the Department will be having an open house/informational meeting immediately preceding each public hearing. An open house/informational meeting on the deer herd status and the proposed CWD rule will be held from 4:00 p.m. to 7:00 p.m. in Spring Green, Portage, Shopiere, Richland Center, Mt. Horeb, Fayette and Jefferson. An open house/informational meeting on the proposed CWD rule only will be held from 6:00 p.m. to 7:00 p.m. in Pewaukee and Kansasville.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Copies of Rule and Contact Person**

Written comments on the proposed rules may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **March 22, 2004**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

**Initial Regulatory Flexibility Analysis**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

**Environmental Analysis**

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this

action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

#### Fiscal Estimate

This fiscal estimate is created based on the department's current knowledge of the distribution of CWD positive deer in the state. These estimates could change significantly if new positives are found in other parts of the state.

#### A. Increased Costs Details

**Carcass Disposal:** Based on the figures for the 2003 deer season statewide and in the CWD zones, we anticipate similar numbers to be generated for the 2004 seasons.

Anticipated Eradication Zone Disposal Costs in the expanded zone based on 10,000 deer:

Shipping Cost	\$78,512.00
Storage Cost	\$110,000.00
Cremation/Digester Cost (only positives)	\$7,425.00
Landfill Cost	\$6,669.00
Misc. Disposal Cost 1	\$108,375.00
Other Misc. Costs 2	\$16,250.00
Total	\$327,231.00

**Anticipated grand total for statewide carcass disposal: \$327,231**

**CWD Deer Hunts:** The costs associated with the implementation of the expanded deer hunt in the expanded CWD eradication and herd reduction zones:

Law Enforcement: The additional hunts will require 8 additional hours per pay period for each of the 6 wardens in the expanded zones. Added to this would be any necessary meals, miles, etc.

With an average salary of about \$25, with an additional \$10 for benefits and fringe, this works out as follows:

6 Wardens x 8 hours/pay period = 48 hrs/pay period x 10 pay periods = 480/hrs x \$35/hr salary and fringe = **\$16,800** salary and fringe. In addition, there will be the added cost of approximately **\$2,040** meals and **\$2,189** in mileage (meals and miles based upon 2002 cost estimates for CWD efforts).

Wildlife Management: The costs associated with the implementation of the new CWD deer herd control hunts including the testing and permit issuance during the extended season at registration stations will result in an additional staff time including the use of LTE's, as well as mileage and other equipment expenses.

3 LTE's x 20 hours/week = 60 hours x 10 pay periods = 600 hours x \$11/hour = **\$6,600**

10 hours of overtime / pay period x 14 (SER wildlife staff) = 140 hours x 10 pay periods = 1,400 hours x \$28/hour (salary and fringe) = **\$39,200**

Meals, mileage and other 1614 appropriations based on the first 14 weeks of CWD operation expenditures (~ \$2,000 / wk): 20 weeks x \$2,000 = **\$40,000**

Parks and Recreation: Signage and maps will need to be produced for the 3 state park/state forest properties where expanded herd control measures will be in effect.

Supplies and Services: Printing or updating Maps, Signs, Permits and Instructions:

\$500.00 for 3 properties which have previously been open to deer hunting (\$500x 3) = **\$1,500**

Supplies and Services: Vehicle Maintenance and Expenses for Increased Patrol & Sharpshooting

\$1,000 per park x 3 = **\$3,000**

Salaries and Fringes – \$30 per hour: Determination of Hunting Boundaries, Preparing/Revising Maps and Signs, Posting Signs

16 hours 3 properties which have previously been open to deer hunting (16 x 3 x \$30) = **\$1,440**

Salaries and Fringes – \$30 per hour: Distributing Permits, Law Enforcement, Admitting Hunters to Park and/or Documenting Permits

4 hours per park per day x \$30 per hour x 3 properties x 38 days (based on the average number of days all 3 parks will be open to hunting) = **\$13,680**

**Anticipated grand total for hunting season implementation**

**Salary and Fringe: \$77,720**

**Materials and Expenses: \$48,729**

**New Eradication Zone Efforts:** Deer registration staff time and resources will be required.

Registration Stations = 6 perm. employees x 20 additional hours/pay period x 4 pay periods = 480 x \$28 / hour = **\$13,440** salary and fringe.

Meals, mileage and other 1614 appropriations based on last years CWD operation expenditures (~ \$2,000 / wk): 11 weeks x \$2,000 = **\$22,000**

**Anticipated grand total for eradication zone activities**

**Salary and Fringe: \$13,440**

**Materials and Expenses: \$22,000**

#### B. Decreased Revenue Details:

There will be a loss in revenue stemming from the absence of bonus permit sales in the CWD zones and the potential issuance of free licenses to CWD eradication zone hunters.

Approximately 80% of bonus permits are sold to resident hunters with the remaining 20% sold to non-residents. Bonus permits cost \$12 for residents and \$20 for non-resident deer hunters.

Bonus permit sales from 2002–2003 were used to determine the average number of bonus permits sold in Deer Management Units (DMUs) 70G, 76A, 77B, and 77C.

70G – 796

76A – 5,791

77B – 2,311

77C – 2,258

Under the current proposal, DMUs 76A and 77C would be split. Accordingly, the number of bonus permits sold would have to be adjusted.

76A – 5,791/2 = 2,896

77C – 2,258/2 = 1,129

The total number of bonus permit sales lost would equate to the following.

796+2,896+2,311+1,129 = 7,132

**Bonus Permit Sales Loss**

7,132 x .8 = 5,706 x 12 = \$68,472

7,132 x .2 = 1,426 x 20 = \$28,520

\$68,472+\$28,520 = **\$96,992**

**Free Licenses to CWD Disease Eradication Zone Hunters**

The fiscal impact of revenue loss from exempting hunters in CWD zones from having a license could be anywhere between \$0 and \$2,428,200, depending on how extensive the Department implemented the provision. For the entire herd reduction zone in southwest Wisconsin, the Department estimated the number of hunters in 12 deer management zones based on the average number of deer harvested from those zones for the years 1999 through 2001. The average annual number of hunters in those zones is estimated at a total of 109,000. The average deer hunter success rate from 1999–2001 was 44%. The average number of deer harvested per year (47,900) divided by the average harvest success rate (44%) yields the approximate number of licensed hunters per year in the 12 management zones (109,000). Using the following methodology, the Department estimates the loss of revenue for exempting licenses for the entire herd reduction zone to be \$2,428,200. Using the same methodology, but exempting licenses only for what is now called the intensive harvest zone would result in an estimated revenue loss of \$376,400.

License sales from 1999–2001 were averaged to determine the approximate percentage of deer hunters under the authority of each license type as follows:

9.2% – Resident Patron; 10.0% – Resident Sports; 55.5% – Resident Gun Deer; 19.9% – Resident Archery; 4.5% – Non–resident Gun Deer; .9% – Non–resident Archery.

The total fiscal impact created by free landowner permits can then be calculated by determining the number of each license authority sold based on the 1999–2001 averages.

**Resident Patron** – For Resident Patron license holders, it is assumed that most patron license buyers would continue to buy the patron license for the other privileges included with the license. However, it is estimated that 5% would stop buying patron licenses and purchase small game and fishing licenses separate, at a loss of \$107 per license holder. For this assumption, the Department would lose \$53,878. (109,000 licenses x .092% of license type = 10,071 patron licenses x 5% = 504 x \$107 = \$53,878)

**Resident Sports** – For Resident Sports license holders, it is assumed that 70% would discontinue buying the Sports license, and instead buy a small game license and a fishing license, at a revenue loss of \$12 each to the Department. For this assumption, the Department would lose \$9,096. (109,000 x .10 = 10,855 Sports Licenses x 70% = 7,599 x \$12 = \$91,186)

**For Resident Gun Deer**, it is assumed that 90% of License holders in the 12 zones would not buy deer licenses. For this assumption the Department would lose \$1,087,979. (109,000 x .55.5 = 60,443 x 90% = 54,399 licenses x \$20 = \$1,087,979)

**For Resident Archery**, it is assumed that 90% of license holders in the 12 zones would not buy deer licenses. For this assumption, the Department would lose \$390,000. (109,000 x .19.9 = 21,667 licenses x 90% = 19,500 x \$20 = \$390,000)

**For Non–resident Gun Deer**, it is assumed that 100% of license holders would not buy deer licenses. For this assumption, the Department would lose \$665,558. (109,000 x .045 = 4,930 licenses x \$135 = \$665,558)

**For Non–resident Archery**, it is assumed that 100% of license holders would not buy deer licenses. For this assumption, the Department would lose \$117,720. (109,000 x .009 = 1,034 licenses x \$135 = \$139,568)

#### Total Licensing Loss

\$53,878 + \$91,186 + \$1,087,979 + \$390,000 + \$665,558 + \$139,568 = \$2,428,169

#### Caveats

- 1) People may have bought licenses even though it was not required.
- 2) Hunter numbers declined in this area after the discovery of CWD, but have shown rebounding trends.
- 3) The estimate is totally dependent on which areas are selected for exemption.

Total anticipated decreased revenue from loss of bonus permit sales and the issuance of free licenses in the CWD eradication zone (pending legislative approval) = \$96,992 + \$2,428,169 = **\$2,525,161.**

### **Notice of Hearing Natural Resources (Fish, Game, etc., Chs. NR 1—) [CR 04–014]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (26), 350.12 (4) and 227.11 (2) (a), Stats., interpreting ss. 23.09 (26) and 350.12 (4), Stats., the Department of Natural Resources will hold a public hearing on revisions to s. NR 50.09 (4) and (5), Wis. Adm. Code, relating to the snowmobile trail grant program. The proposed rule will change the color, shape and size of the directional arrow used in signing snowmobile trails. The proposed rule also changes the reference to the maximum per mile reimbursement from an old figure of \$200 to that specified under current statute.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

<b>March 24, 2004</b> Wednesday at 1:00 p.m.	Room 1, Portage Co. Courthouse Annex, 1462 Strongs Avenue Stevens Point
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NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Larry Freidig at (608) 266–5897 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Copies of Rule and Contact Person**

Written comments on the proposed rules may be submitted to Mr. Larry Freidig, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than March 26, 2004. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Freidig.

#### **Initial Regulatory Flexibility Analysis**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

#### **Environmental Analysis**

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the

Department's consideration of the impacts of the proposal and reasonable alternatives.

#### **Fiscal Estimate**

There is no fiscal impact for these rules.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection—General,**  
**Chs. NR 100—)**  
**[CR 04–015]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 292.75 and 227.11 (2) (a), Stats., interpreting s. 292.75, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 168, Wis. Adm. Code, relating to the administration of the brownfield site assessment grant program.

#### **Analysis Prepared by Dept. of Natural Resources**

Since ch. NR 168 was promulgated in 2000, four rounds of grants have been issued. The proposed rule modifies ch. NR 168 with technical clarifications so that the rule language is consistent with statutory changes made after the rule took effect. The changes are meant to clarify grant guidelines and to address issues not considered during the initial draft of the rule. Other changes proposed are to revise the application scoring process so that more points are given to sites that are greater environmental and community priorities, with less emphasis on the financial contribution of the applicant.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

<b>March 16, 2004</b> Tuesday 9:00 a.m.	<b>Video conference participation</b> will be available at: Room 227 UW–Madison Pyle Center 702 Langdon Street <b>Madison</b>  Room 98, State Office Building 819 N. 6 <sup>th</sup> Street <b>Milwaukee</b>  Room 618, State Office Building 200 N. Jefferson Street <b>Green Bay</b>  Room 139, State Office Building 718 W. Clairemont Avenue <b>Eau Claire</b>
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NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Michael Prager at (608) 261–4927 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Copies of Rule and Contact Person**

Written comments on the proposed rule may be submitted to Mr. Michael Prager, Bureau of Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707 or faxed to (608) 267–7646 no later than March 26, 2004. Written

comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Prager.

#### **Initial Regulatory Flexibility Analysis**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

#### **Environmental Analysis**

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

#### **Fiscal Estimate**

None anticipated.

**Notice of Hearing**  
**Psychology Examining Board**  
**[CR 04–021]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 455.08, Stats., and interpreting ss. 455.065, 455.08 and 455.09, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Psy 2.09 (5); to amend sections ss. Psy 1.02 (3), 2.09 (1) (i), 4.02 (2) (intro.) and (c); and to create ss. Psy 1.02 (9) and 5.01 (14) (d), relating to the definitions of client and psychological treatment, degree requirements, interim determination of degree requirements met, continuing education courses and professional conduct.

#### **Hearing Date, Time and Location**

<b>Date:</b>	<b>March 17, 2004</b>
<b>Time:</b>	9:30 A.M.
<b>Location:</b>	1400 East Washington Avenue Room 179A Madison, Wisconsin

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by March 29, 2004, to be included in the record of rule-making proceedings.

#### **Proposed Order**

An order of the Psychology Examining Board to repeal s. Psy 2.09 (5); to amend ss. Psy 1.02 (3), 2.09 (1) (i), 4.02 (2) (intro.) and (c); and to create ss. Psy 1.02 (9), and 5.01 (14) (d); relating to the definitions of client and psychological treatment, degree requirements, interim determination of degree requirements met, continuing education courses and professional conduct.

### Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 455.08 and 455.09, Stats.

Statutes interpreted: Sections 455.065, 455.08 and 455.09, Stats.

The minor changes treated by the rules herein concern qualifications for licensure, the scope of professional practice, continuing education and professional conduct. The Psychology Examining Board may promulgate these rules under s. 455.08, Stats., "The examining board shall adopt such rules as are necessary under this chapter and shall, by rule, establish a reasonable code of ethics governing the professional conduct of psychologists..." Section 455.09, Stats., also charges the board with protecting the safety and welfare of the citizens from unprofessional conduct. Section 455.065, Stats. requires that the board promulgate rules for continuing education. Illinois, Iowa, Michigan and Minnesota have extensive rules concerning licensure requirements; Iowa and Minnesota have rules concerning scope of practice and professional conduct. The proposed rules make minor changes to the present rules, move some statements to more natural places in the present rules, make explicit present policy, and make clarifications. Only minor substantive changes are made to present procedures. No significant fiscal effect on small businesses is anticipated.

SECTION 1. removes a reference to students as clients of psychologists. The language was added to the rule recently but it caused unforeseen problems of interpretation. The purpose of the removed language is now served by the creation of Psy 5.01 (14) in Section 6, which prohibits sexual contact, etc., with students.

SECTION 2. adds explicit language to the administrative rules an interpretation regarding hypnosis and the practice of psychology that has long been followed by the Examining Board.

SECTION 3. creates language to clarify the meaning of the phrase "full-time residence," and adds instruction concerning multi-cultural differences to the substantive content area of "individual differences."

SECTION 4. removes a provision that the Examining Board will provide an interim determination to licensure candidates prior to completion of all requirements.

SECTION 5. removes the phrase "at the post-licensure level" from the section describing acceptable continuing education programs. The language was added to the rule recently but it proved to be unclear and misleading.

SECTION 6. creates a prohibition against sexual contact, etc. between psychologists and persons whom they are teaching, supervising or instructing.

#### TEXT OF RULE

SECTION 1. Psy 1.02 (3) is amended to read:

Psy 1.02 (3) "Client" means the individual, group, business, agency, school, organization, or association for whom the licensee of the board provides professional services for which the licensee is usually and customarily compensated. ~~When teaching services are provided, the term "client" includes students.~~ The term "client" includes the term and concept of "patient."

SECTION 2. Psy 1.02 (9) is created to read:

Psy 1.02 (9) "Psychological treatment" includes hypnosis used for therapeutic purposes other than smoking cessation or weight control.

SECTION 3. Psy 2.09 (1) (i) is amended to read:

Psy 2.09 (1) (i) The curriculum shall encompass a minimum of 3 academic years of full-time graduate study, at least one of which shall be in full-time residence at the site of the institution granting the degree. In addition to the instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of 3 or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas: a) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology; b) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion; c) Social bases of behavior: social psychology, group processes, organizational and systems theory; and d) Individual differences: personality theory, human development, abnormal psychology, multicultural differences. In addition, all professional education programs in psychology will include course requirements in specialty areas.

SECTION 4. Psy 2.09 (5) is repealed.

SECTION 5. Psy 4.02 (2) (intro.) and (c) are amended to read:

Psy 4.02 (2) (intro.) APPROVAL OF CONTINUING EDUCATION PROGRAMS. The board shall approve all of the following programs and courses if relevant to the professional practice of psychology ~~at the post-licensure level~~:

(c) Graduate level courses or continuing education courses relevant to the professional practice of psychology ~~at the post-licensure level~~ offered by accredited colleges and universities.

SECTION 6. Psy 5.01 (14) (d) is created to read:

Psy 5.01 (14) (d) A person to whom the licensee is providing teaching, supervisory or other instructional services.

#### Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute this rule change.

#### Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

### Notice of Hearing

#### Veterinary Examining Board

[CR 04-018]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Veterinary Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats., and interpreting ss. 453.06 (1) and 453.065, Stats., the Veterinary Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. VE 5.03 (1) (d); and to amend s. VE 2.01 (2), relating to admission time for national examinations and post graduate training permits.

#### Hearing Date, Time and Location

Date: **March 24, 2004**

Time: **11:30 A.M.**

Location: 1400 East Washington Avenue  
Room 179A  
Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 5, 2004 to be included in the record of rule-making proceedings.

### Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Statutes interpreted: ss. 453.06 (1) and 453.065, Stats.

Section 1. Section VE 2.01 (2) is amended to change the admission time for graduates from 6 to 8 months within graduation date to allow candidates to take their national examination and to be consistent with current contact with National Boards. This amendment will outline requirements that must be met before a last year veterinary student can be admitted to the examination.

Section 2. Section VE 5.03 (1) (d) is repealed to be consistent with 2001 Wisconsin Act 76, relating to temporary post graduate training permits. The repeal of s. VE 5.03 (1) (d) eliminates the requirement that an applicant for a temporary post graduate training permit to either have

completed the national licensure examination, be scheduled to take the examination, or be waiting for the results of the national examination.

### Text of Rule

SECTION 1. VE 2.01 (2) is amended to read:

VE 2.01 (2) To be qualified to sit for the north American veterinary licensing examination, an applicant must either have graduated from or be a last year student who is scheduled to graduate in not more than ~~6~~ 8 months at a school of veterinary medicine approved by the board or a foreign school of veterinary medicine listed by the AVMA. To be qualified to sit for the examination on state laws and rules, an applicant must meet the requirements of s. VE 3.03.

SECTION 2. VE 5.03 (1) (d) is repealed.

### Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs for staff to print and distribute the rule change.

### Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

### Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

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## Submittal of proposed rules to the legislature

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*Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.*

**Marriage and Family Therapy, Professional Counseling  
and Social Worker Examining Board**

**(CR 03–058)**

Relating to the National Counselor Mental Health  
Certification Examination.

**Natural Resources**

**(CR 03–107)**

Sport fishing for yellow perch in Green Bay and its major  
tributaries and all other tributary streams, rivers and  
ditches to Green Bay and to commercial fishing for  
yellow perch in Green Bay.

**Natural Resources**

**(CR 03–064)**

Relating to exclusion of costs to elevate a nonconforming  
building or a building with a nonconforming use from the  
50% provisions of the paragraph.

**Transportation**

**(CR 03–122)**

Chs. Trans 149 and 305, relating to titling and registration  
of homemade, reconstructed or repaired salvage  
vehicles.

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## Rule orders filed with the revisor of statutes bureau

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*The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

**Transportation  
(CR 03-109)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Effective 4-1-04.

**Transportation  
(CR 03-114)**

An order affecting ch. Trans 250, relating to oversize and overweight permits for vehicles and loads.

Effective 4-1-04.

**Veterans Affairs  
(CR 03-110)**

An order affecting ch. VA 17, relating to the administration of the military funeral honors program.

Effective 4-1-04.

**Workforce Development  
(CR 03-092)**

An order affecting chs. DWD 218, 220, 221, 224 and 225 and PC 1, 2, 4, 5 and 7, relating to the transfer of Personnel Commission responsibilities to the Equal Rights Division and other revisions to civil rights rules.

Effective 4-1-04.

**Workforce Development  
(CR 03-101)**

An order affecting ch. DWD 59, relating to the child care local pass-through program.

Effective 4-1-04.

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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the February 29, 2004, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### **Financial Institutions – Credit Unions (CR 02-133)**

An order affecting ch. DFI-CU 73, relating to annual audits and verification of accounts by state-chartered credit unions. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.19 (3m), a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Health and Family Services (CR 03-080)**

An order affecting ch. HFS 15, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR). Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

The rule changes will affect about 10 facilities that may be considered small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. However, the department is not making any exception for those entities in the proposed rule because federal uniformity clauses do not allow exceptions for such assessments.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Natural Resources (CR 03-050)**

An order affecting chs. NR 104 to 106, and 210, relating to the regulation of discharges of ammonia to surface waters of the state and relating to other minor corrections to errors. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

It is not expected that this rule will have a direct impact on small businesses. Small businesses may handle their wastewater in a variety of ways.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No requests for modifications were received.

### **Natural Resources (CR 03-063)**

An order affecting s. NR 140.10 Table 1, relating to groundwater quality standards. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

The department does not believe that the proposed rule will have a significant economic impact on a substantial number of small businesses. The compliance and reporting requirements in ch. NR 140 are not changed by the proposed amendments. If a groundwater quality standard is exceeded, the owner or operator of a facility, practice or activity, including any small business, must report the violation to the appropriate regulatory agency. The type of small businesses that are typically impacted by ch. NR 140 include dry cleaners, small manufacturers, agricultural cooperatives, farmers, underground storage tank owners, small solid waste disposal facilities, small wastewater treatment operations, as well as others. In effect, any small business that has groundwater quality standards listed in ch. NR 140 is responsible for responding to the release consistent with the requirements of ch. NR 140.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No requests for modifications were received.

### **Public Service Commission (CR 03-099)**

An order affecting ch. PSC 135, relating to natural gas safety. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

Natural gas utilities may experience modest increases in the cost of complying with new pipeline safety rules due to increased requirements for operator qualifications. The proposed rules will have no effect on small business.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Transportation (CR 99-135)**

An order affecting chs. Trans 138 and 139, relating to dealer facilities, records and licenses; and motor vehicle trade practices. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

This proposed rule will have little net effect on small businesses. On the one hand, business activities of dealers are

improved by some streamlined requirements; on the other hand, disclosures of sales practices are required to provide adequate consumer protection. Specifically:

1. Amendments that clarify that out-of-state dealers who negotiate sales with Wisconsin residents in Wisconsin and deliver the vehicles in this state are subject to Wisconsin dealer licensing requirements will impact small businesses. Small business dealerships in other jurisdictions will be required to become licensed in Wisconsin and follow Wisconsin reporting and trade practice law for sales in Wisconsin. *Small dealer businesses in Wisconsin will be affected in that they will be competing on equal regulatory ground with dealers from other jurisdictions that initiate, negotiate and conclude sales in Wisconsin but whose offices are outside the state boundaries.*

2. Changing the definition of a "new" vehicle to allow any number of miles for manufacturer tests, pre-delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer's test drive) will impact small businesses. *This change will require dealers to keep track of reasons for which each new car on its lot is driven and the number of miles driven. It will, however, enable those dealers to sell as "new" some vehicles which prior law would have required be sold as "used."*

3. Exempting motorcycles from the requirement of displaying the Wisconsin Buyer's Guide label on the motorcycle will impact small businesses. This provision will reduce small business costs associated with protecting and/or replacing labels as is required under current law; however, requiring that the label be shown or provided to the consumer before a contract becomes binding creates a new function for businesses not displaying the label on the vehicle to perform. The dealer community, however, has asked for this change in law.

4. Requiring U.C.C. financing statements be filed when a dealer takes a car on consignment purchased by the consignor for purposes other than personal, family or household purposes does impact small businesses. The law imposes a burden of filing U.C.C. financing statements on dealers. Conversely, it protects small business owners who consign vehicles for sale through dealers. Because the law exempts vehicles purchased by the consignor for personal, household or family purposes, and the department believes most consignment vehicles will fall into that category, the department believes the impact of this rule change will be minimal.

5. Permitting dealers to accept a more than one offer to purchase a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer will impact small business dealers. *This provision will allow dealers more flexibility in structuring transactions. Moreover, it provides a regulatory framework that protects consumers from a practice that is already widespread by requiring dealers to provide clear disclosure to consumers as to the status of their offers.*

6. Permitting dealers to print a new contract to replace one when amendments are being made will save time for small businesses by allowing dealers to printout a new computer generated copy of a contract rather than having to handwrite in multiple contract changes.

7. Giving auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase will ease administrative burdens on small business auctions.

8. Prohibiting misleading consumer loan application practices made possible by artificial adjustments to the price of a vehicle will require dealers to specify true prices and discounts on the purchase contract. *This will protect consumers from misleading consumer loan practices, will help dealers by assuring that the vehicle loan will more likely be made and the purchase will close, and does not create a regulatory burden on small business.*

9. Permitting dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document, signed by the buyer that itemizes the components of that price will reduce dealer paperwork while providing the same consumer protection. *Therefore this change will reduce regulatory burdens on small business dealers.*

10. Regulating adjustments to the amount due on delivery when a lien pay-off is an estimate will protect consumers from contract obligations that they cannot meet, while providing dealers with a mechanism to close a sale when exact payoff amounts are unknown. This will reduce regulatory burdens on small business dealers.

11. Allowing a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery. *This provision provides necessary consumer protections for sales involving rebates and does not increase regulatory burdens on small business dealers.*

12. Requiring dealers to pay off loans on a trade-in vehicle within 14 days of acquiring the vehicle protects consumers from overdue fees and penalties that accrue if a loan is not promptly paid off and does not create a regulatory burden on small business dealers.

13. Requiring a dealer either (a) to cancel a purchase contract within 7 days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms will result in dealers occasionally having to finance vehicle purchases. It is balanced, however, against the fact that until the contract is cancelled, the buyer cannot contract to purchase a different car just in case the dealer does decide to finance their purchase of the original vehicle. This provision requires the dealer to make a decision on financing for the vehicle promptly and to advise the consumer of that decision. While it may create a burden on small dealerships that miss the deadline, it will protect other small businesses that contract to purchase vehicles from dealers and who are not provided with an answer as to financing availability promptly.

14. Specifying time periods a dealer must wait for a consumer to accept or reject proposed credit terms, should be a benefit to small business dealers by dealer cost situation by removing uncertainty as to purchase consummation.

15. To clarifying that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured will eliminate a regulatory burden in current law. *This provision reduces dealer uncertainty as to whether a sale will close. To protect all parties, the change in law requires dealers and consumers to agree in contract to a date.*

16. Excluding audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment

is replaced with identical manufacturer's original equipment will not impact small businesses.

17. Clarifying that a dealer may complete a purchase contract for a vehicle without inspecting the vehicle and disclosing its defects if the dealer is not required to inspect the vehicle or provide a disclosure reduces small business dealer costs without impacting consumer protection to consumers.

18. Restoring warranty disclosure requirements to the rule will restore a provision of law that was inadvertently removed from the administrative code. *This provision will not impact small business dealers because it does not reflect a change in dealer practices or enforcement.*

With regard to each policy change described above that may increase burdens on small businesses, the Department has considered establishing less stringent compliance or reporting requirements, less stringent schedules, consolidation or simplification of reporting requirements, and exempting small businesses. The Department believes that it is of paramount importance that consumer protections remain the same among motor vehicle dealers regardless of the size of the dealership. Exempting small dealerships from

consumer protection laws would invite abuse by small dealers.

#### **Summary of Comments by Legislative Review Committees**

The Legislative Council made several comments to the proposed rule, all of which have been incorporated.

#### **Transportation (CR 03-093)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on specified highways. Effective 3-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **February 2004**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Financial Institutions — Credit Unions

**Ch. DFI-CU 73** (Entire chapter)

#### Health and Family Services

**Ch. HFS 15**

S. HFS 15.01

S. HFS 15.02 (2), (6) and (8)

SS. HFS 15.03 and 15.04

S. HFS 15.07 (3)

#### Natural Resources

**Ch. NR 104**

S. NR 104.02 (3) (a) and Table 1

**Ch. NR 105**

S. NR 105.05 (3) (L), (m) and Tables

S. NR 105.06 Tables

S. NR 105.08 Table

S. NR 105.09 Table

**Ch. NR 106**

S. NR 106.05 (5) (a)

S. NR 106.09 (2) (b)

S. NR 106.10 (1) (intro.)

SS. NR 106.115 to 106.12

S. NR 106.16

SS. NR 106.30 to 106.38

**Ch. NR 140**

Ch. NR 140, Table 1

**Ch. NR 210**

S. NR 210.05 (2) (c)

#### Public Service Commission

**Ch. PSC 135**

S. PSC 135.019 (1)

#### Transportation

**Ch. Trans 138**

S. Trans 138.01 (2m)

S. Trans 138.02 (2m), (5g), (5r), (6m), (10)

S. Trans 138.03 (6)

S. Trans 138.04 (intro.), (1) (a), (b), (e), (g), (2), (3)

S. Trans 138.05 (5)

S. Trans 138.08 (2)

**Ch. Trans 139**

S. Trans 139.01 (3)

S. Trans 139.02 (3m), (6m), (9r), (10g), (10r), (11), (19)

S. Trans 139.04 (4), (6) (a), (c), (d)

S. Trans 139.05 (1) (a), (2) (f), (g), (i) to (jr), (5) (b), (6), (6m), (8g), (8r), (10), (11), (11m)

S. Trans 139.055

S. Trans 139.06 (intro.) and (10)

SS. Trans 139.07 to 139.09

**Ch. Trans 276**

S. Trans 276.07 (35m)

### Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

#### Financial Institutions — Credit Unions

**Ch. DFI-CU 56**

S. DFI-CU 56.06

**Ch. DFI-CU 60**

S. DFI-CU 60.06

**Ch. DFI-CU 67**

S. DFI-CU 67.01

#### Health and Family Services

**Ch. HFS 15**

S. HFS 15.02 (3)

#### Natural Resources

**Ch. NR 106**

S. NR 106.07 (8)

**Ch. NR 210**

S. NR 210.05 (1) (intro.)

#### Public Service Commission

**Ch. PSC 135**

S. PSC 135.014 (1)

S. PSC 135.015 (1)

S. PSC 135.163 (2)

SS. 135.195 and 135.199

#### Transportation

**Ch. Trans 138**

S. Trans 138.01 (1) and (3)

S. Trans 138.025 (1), (2) (intro.), (a), and (h)

S. Trans 138.027 (1)

S. Trans 138.03 (2)

S. Trans 138.04 (1) (h)

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## Sections affected by revisor's corrections not published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

<b>Location of invalid cross-reference</b>	<b>Invalid cross-reference</b>	<b>Correction</b>
NR 101.13 (5) (d)	NR 106.12	subch. IV of ch. NR 106
NR 200.065 (1) (f)	NR 106.16 (2)	NR 106.115 (2)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 36.** Relating to issuance of general obligation bonds for the Veterans Home Loan Program and appointment of hearing officer.

**Executive Order 37.** Relating to a proclamation that the Flag of the United State and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Spc. Robert J. Cook of the United States Army who lost his life during service to Afghanistan.